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Meeting of States Parties

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Letter dated 19 May 2006 from the Chairman of the Commission on the Limits of the Continental Shelf addressed to the President of the sixteenth Meeting of States Parties

1. It is my honour, once again, to address the Meeting of States Parties to the United Nations Convention on the Law of the Sea in my capacity as Chairman of the Commission on the Limits of the Continental Shelf and to inform you about dev[e]opments in the work of the Commission that have taken place since I add[re]ed the fifteenth Meeting in June 2005.

2. It may be recalled that article 76 of the Convention sets out the definition and the various methods for a coastal State to establish the outer limits of its continental shelf, including beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

3. In this connection, it may also be recalled that the Commission was established to perform two specific functions, as set out in article 3 (1) of annex II to the Convention:

(a) To consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles and to make recommendations in accordance with article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea;

(b) To provide scientific and technical advice, if requested by the coastal State concerned, during the preparation of the data referred to in subparagraph (a).

4. Since the fifteenth Meeting of States Parties in June 2005, the Commission has held its sixteenth and seventeenth sessions. The sixteenth session was convened from 29 August to 16 September 2005. An account of the progress of work in the Commission at that session is contained in the statement of the Chairman (CLCS/48). In particular, the Commission began the consideration of the submission of Ireland made pursuant to article 76, paragraph 8, of the Convention. The Commission also continued the consideration of the submissions made by Brazil and Australia through the respective subcommissions established for that purpose.

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5. The presentation of the submission of Ireland was made by Declan Smyth, Law of the Sea Director, Department of Foreign Affairs, who was the head of the delegation of Ireland. Mladen Juračić, Vice-Chairman of the Commission, chaired the meetings of the Commission during the consideration of the submission made by Ireland. Ireland indicated that its submission was partial as it contained information only in respect of a portion of the outer limits of the continental shelf appurtenant to Ireland that lie beyond 200 nautical miles from the baselines, namely the area abutting the Porcupine Abyssal Plain. This was the first time a partial submission was made to the Commission by a coastal State, a possibility envisaged by paragraph 3 of annex I to the rules of procedure of the Commission (CLCS/40). Ireland also specified that that portion of the shelf was not the subject of any dispute and, in the view of the Government of Ireland, its consideration by the Commission would not prejudice matters relating to the delimitation of boundaries between Ireland and any other States. Denmark and Iceland, by notes verbale dated 19 and 24 August 2005 respectively, indicated their understanding that the partial submission by Ireland and the Commission's recommendations were without prejudice to any future submissions made by Denmark and/or by Iceland and to the delimitation of the continental shelf in the Hatton-Rockall area between Denmark (the Faroe Islands) and Ireland, and between Iceland and Ireland.

6. The Commission decided that, as provided for in article 5 of annex II to the Convention and in rule 42 of the rules of procedure of the Commission, the submission of Ireland would be examined through the establishment of a subcommission. A subcommission was consequently established, taking into account, inter alia, the provisions of the Convention and the rules of procedure of the Commission and the need to ensure a scientific and geographical balance. The members of the subcommission were Hilal Mohamed Sultan Al-Azri, Indurlall Fagoonee, Noel Newton St. Claver Francis, Mihai Silviu German, Abu Bakar Jaafar, Yuri Borisovitch Kazmin and Philip Alexander Symonds. The subcommission elected Mr. Jaafar as its Chairman, and Messrs. Francis and Kazmin as its Vice-Chairmen.

7. The Chairman of the subcommission subsequently informed the Commission that, in accordance with section 10, paragraph 2, of annex III to the rules of procedure, it had decided to seek the assistance of another member of the Commission, Fernando Manuel Maia Pimentel, as an expert in hydrography.

8. In accordance with annex III, paragraph 5, the subcommission completed its preliminary analysis of the submission. During that phase, it held a number of meetings with the delegation of Ireland. In view of the volume of work required by the examination of the submission, the subcommission decided to hold resumed meetings in 2006 in order to continue its examination of the submission.

9. At its sixteenth session, the Commission took note of the legal opinion contained in the letter dated 25 August 2005 from the Legal Counsel addressed to the Chairman of the Commission on whether it was permissible, under the Convention and the rules of procedure of the Commission, for a coastal State, which had made a submission to the Commission in accordance with article 76 of the Convention, to provide to the Commission in the course of the examination by it of the submission, additional material and information relating to the limits of its continental shelf or substantial part thereof, which constituted a significant departure from the original limits and formula lines that had been given due

publicity by the Secretary-General of the United Nations in accordance with rule 50 of the rules of procedure of the Commission. The legal opinion had been prepared at the request of the Commission at its fifteenth session. The Commission decided to act in accordance with the legal opinion (CLCS/48). The Commission furthermore decided to forward the legal opinion to the four States that had made submissions to date and to issue it as a document of the Commission (CLCS/46). The Commission also noted the importance of due publicity given to the submissions and expressed the view that any new information submitted by a coastal State during the consideration of its submission by the Commission should, in case of significant departures from the originally proposed outer limits of the continental shelf, be given due publicity. The coastal State should provide the content of the information to be publicized. Sufficient time should also be given to other States to express their views on the subject. It was also pointed out that States should be aware of the practical consequences in the event that new particulars regarding the outer limit of the continental shelf beyond 200 nautical miles were submitted during the examination of a submission. In such cases, substantial delays in the preparation of the recommendations by the Commission might occur.

10. The seventeenth session of the Commission was held at United Nations Headquarters from 20 March to 21 April 2006, pursuant to the decision taken at its sixteenth session (CLCS/48, para. 64) and paragraph 34 of General Assembly resolution 60/30 of 29 November 2005. The plenary of the session was held from 3 to 7 April and the periods from 20 to 31 March and from 10 to 21 April were used for the technical examination of submissions at the Geographic Information System laboratories and other technical facilities of the Division for Ocean Affairs and the Law of the Sea. Three submissions, namely those of Brazil, Australia and Ireland, were simultaneously examined during the session by their respective subcommissions.

11. Galo Carrera, Chairman of the subcommission established to examine the submission made by Brazil, reported on the work of the subcommission during the first part of the seventeenth session. In his report, he focused on the two-week consultations with the delegation of Brazil conducted on the basis of the practice described in paragraph 35 of the statement of the Chairman of the Commission from its sixteenth session (CLCS/48). During the first week of consultations, the subcommission made the first round of presentations, each of which dealt with a separate region. The delegation of Brazil provided its initial responses in the second week and made a commitment to provide full responses no later than 31 July 2006. Mr. Carrera also noted that Brazil had informed the subcommission that it would provide new seismic and bathymetric data prior to that date. In the light of that information, Mr. Carrera outlined the programme of future work of the subcommission. He stated that new seismic and bathymetric data would be considered by the subcommission during the intersessional period and during the next series of meetings of the subcommission, planned to be held from 23 August to 5 September 2006, during the eighteenth session of the Commission. He concluded his report by stating that the subcommission would be in a position to finalize its draft recommendations only after all responses and materials had been considered.

12. Harald Brekke, Chairman of the subcommission established to examine the submission made by Australia, reported on the work carried out during the intersessional period and the seventeenth session, during which a number of meetings had been held with the delegation of Australia. He stated that the

subcommission had made considerable progress in the examination of the submission of Australia. The Chairman also said that in view of the volume of work that the examination of the submission by Australia entailed, the subcommission had scheduled six weeks of resumed meetings in the premises of the Division in 2006 in addition to the individual work of the members of the subcommission during the intersessional periods. The resumed meetings of the subcommission would be held from 28 August to 15 September 2006. He stated that the subcommission aimed to submit its final recommendations in time for it to be considered by the Commission before the next election of its members.

13. Abu Bakar Jaafar, Chairman of the subcommission established to examine the submission made by Ireland, reported on the work carried out during the intersessional period, in particular during the resumed sixteenth session held from 23 to 27 January 2006 at the Geographic Information System laboratories of the Division, as well as during the seventeenth session from 10 to 21 April 2006, during which a number of meetings had been held with the delegation of Ireland. The Chairman stated that the subcommission would continue its work during the eighteenth session from 23 August to 5 September 2006 and that the subcommission planned to submit its final recommendations to the Commission at the end of the eighteenth session.

14. Further details of the progress of work during the seventeenth session are contained in the statement of the Chairman (CLCS/50).

15. Following the concerns expressed by several delegations at the fifteenth Meeting of States Parties regarding the consistency of rule 52 of the rules of procedure of the Commission with the provisions of article 5 of annex II to the Convention, at the sixteenth session of the Commission the members of the Commission exchanged views on rule 52 of the rules of procedure and the related section VI of annex III to those rules. Views were exchanged on possible mechanisms to accommodate the concerns of coastal States, as conveyed in the note verbale from Brazil and in the statements of several delegations during the fifteenth Meeting of States Parties. In particular, the members of the Commission contemplated a possible mechanism by which the coastal State would be appraised of the content of the recommendations proposed by a subcommission to the Commission and would be given the opportunity to express its position at the final stages of the consideration of the submission and draft recommendations. The Commission adopted certain amendments (CLCS/48, paras. 39-47) on the understanding that the rules would remain open to further amendment. Discussion on that issue continued at the seventeenth session, at which the Commission adopted by consensus the amendments to section IV (10) of annex III to the rules of procedure, consisting of three new paragraphs (CLCS/50, para. 36).

16. Thereafter, following an extensive discussion on rule 52, and in the light of the divergence of views on the various drafts proposed, the following amendment to rule 52 was adopted, having obtained the required two-thirds majority of members present and voting:

> "Rule 52
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> Attendance by the coastal State at the consideration of its submission
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> The Commission shall, through the Secretary-General, notify the coastal State which has made a submission, no later than 60 days prior to the opening date

of the session, of the date and place at which its submission will be first considered. The coastal State shall, in accordance with article 5 of annex II to the Convention, be invited to send its representatives to participate, without the right to vote, in the relevant proceedings of the Commission pursuant to section VI of annex III to these rules."

17. The above changes will be reflected in a new version of the rules of procedure (CLCS/40/Rev.1). As a result of the amendments to rule 52 and annex III to the rules of procedure, the Commission recognized that there may be consequential implications on the time required for the consideration of submissions, with regard to the extensive consultations envisaged with the coastal State.

18. During its seventeenth session, the Commission was informed of the activities with regard to training courses for delineation of the outer limits of the continental shelf beyond 200 nautical miles, the preparation of submissions to the Commission and the training manual (CLCS/50). It was informed that the third regional training workshop had been organized in Ghana from 5 to 9 December 2005 in collaboration with the Government of Ghana, the Commonwealth Secretariat, the African Union and the Economic Community of West African States. The training workshop had been attended by 54 technical and administrative staff from 16 developing States of the African region bordering the Eastern Atlantic deemed to have a potential for extended continental shelf.

19. At its seventeenth session, the Commission was also informed about the fourth training workshop in Buenos Aires, which was held from 8 to 12 May 2006. The workshop, organized in collaboration with the Government of Argentina and with the support, among others, of the Commonwealth Secretariat, was to be attended by trainees from Latin American and Caribbean States deemed to have a potential for extended continental shelf.

20. The Commission was also informed that the training manual had been finalized following the workshop in Ghana, and that it would be available at the Buenos Aires workshop in Spanish and English language versions, as well as in electronic format.

21. At the seventeenth session, it was reported that the Trust Fund established for the purpose of facilitating the preparation of submissions to the Commission for developing States, in particular the least developed countries and small island developing States, had assets of approximately one million dollars. Cooperation was envisaged between the Division and the Global Resource Information Database (GRID)-Arendal with regard to training courses. Members of the Division had participated as instructors at a training course organized by GRID-Arendal in Nairobi, attended by trainees from Kenya, Mozambique and the United Republic of Tanzania.

22. As regards the Trust Fund established for the purpose of defraying the cost of participation of the members of the Commission from developing States in the meetings of the Commission, five members of the Commission had received assistance for participation in the sixteenth session and four members had received assistance for participation in the seventeenth session. Assistance from the Trust Fund was also provided in respect of the intersessional meetings of the Commission. A Member State had pledged 150,000 euro (€) for this Trust Fund, to be paid in three annual instalments. The first instalment of €50,000 had been received. The

members of the Commission expressed concern about the limited amount of funds available and urged States to make additional contributions to this Trust Fund.

23. On 19 April 2006, New Zealand made its submission to the Commission through the Secretary-General. On 19 May 2006, France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland made a joint submission to the Commission through the Secretary-General. With regard to other submissions to the Commission expected in the near future, I wish to recall that, as indicated in my previous letters (SPLOS/111 and SPLOS/129) and based on communications from coastal States to the Secretariat, Norway, Nigeria and Tonga intend to make their submissions in 2006; the United Kingdom, Namibia, Sri Lanka, Uruguay and Pakistan in the period 2007-2008; Guyana, Japan and Myanmar by 2009; and Canada by 2013.

24. In 2005, in my letter to the President of the Meeting of States Parties, I took the opportunity to draw the attention of the States Parties to two issues of urgent importance in the above-mentioned context. The first issue concerned additional requirements regarding staff, facilities, software and hardware essential for the consideration of submissions. The Commission has since been informed that despite the recent limitations imposed by the General Assembly on the disbursement of funds from the budget for the 2006-2007 biennium, the Secretariat managed to upgrade the technical facilities as well as the conference room of the Division, which is now fitted with state-of-the-art equipment allowing it to be used as a third Geographic Information System laboratory. As a result of those improvements, the premises of the Division can now accommodate the work of three subcommissions at any given time. The Commission greatly appreciates the efforts of the Secretary-General in the enlargement of office space, improvement of technical facilities and provision of new equipment to the Commission.

25. The second issue relates to the workload for members of the Commission and funding for its members attending meetings of subcommissions, which was extensively discussed during the previous sessions. At the fifteenth Meeting of States Parties, attention was specifically drawn to the workload facing the Commission in connection with the examination of submissions and the time required to complete the necessary tasks. At the request of the Commission, I prepared and presented a short presentation describing the projected workload of the Commission from 2005 to 2009.

26. As I reported at the fifteenth Meeting of States Parties, there is a widespread feeling among the members of the Commission that, under current arrangements, the Commission may not be in a position to perform its functions in an efficient and timely manner. With the receipt of the submission by New Zealand and the joint submission by France, Ireland, Spain and the United Kingdom at the forthcoming eighteenth session, the Commission will be faced with the task of examining five submissions simultaneously. Since the submissions are examined by way of seven-member subcommissions, some members will have to work in more than one subcommission at the same time. The examination of the submissions consists of numerous steps and complex tasks, which the members of the subcommissions have to perform not only during the sessions of the subcommissions, but also during the intersessional periods. By reason of their responsibilities as Commission members with regard to the examination of the submissions, they cannot delegate any tasks that require the exercise of scientific or technical judgement to the Secretariat, or to

outside resources. Linked to that problem is the duration of the examination of submissions, which can extend for long periods of time both during the sessions and the intersessional periods, a factor that creates difficulties for all members of the Commission.

27. Since the Commission had already brought this issue to the attention of the Meeting of States Parties last year, it was agreed that it was important that in 2006 we should bring specific proposals to this meeting for your consideration. At the seventeenth session, therefore, following extensive discussions, the Commission considered and approved a proposal to be submitted to the Meeting of States Parties which is contained in the annex to the present letter. The operative part of the proposal is:

> "*The Meeting of States Parties*,
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> "*Recommends* that, taking into account the importance of the Commission's responsibilities, adequate additional funding from the regular budget of the United Nations is provided to ensure the full participation of the members of the Commission in its work with the requirement of up to four months of full-time work at United Nations Headquarters per year;
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> "*Calls upon* States parties to the Convention to propose, through a draft resolution for consideration by the General Assembly, that the members of the Commission receive emoluments and expenses while they are in performance of Commission duties concerning the consideration of submissions made by coastal States on the outer limits of the continental shelf under article 76, and that such emoluments and expenses should be defrayed through the regular budget of the United Nations."

28. The Commission would like once again to assure the States parties of its readiness to continue to perform its mandated functions with a view to ensuring that the vision of the drafters of the Convention regarding the role of the Commission in the establishment of the outer limits of the extended continental shelf is fulfilled.

I would like to request that the present letter be circulated as a document of the sixteenth Meeting of States Parties.

(*Signed*) Peter F. **Croker**
Chairman of the Commission on the Limits of the Continental Shelf

Annex

Draft decision for consideration by the sixteenth Meeting of States Parties

The Meeting of States Parties,

Recalling the letter dated 5 May 2005 from the Chairman of the Commission on the Limits of the Continental Shelf ("the Commission") addressed to the President of the fifteenth Meeting of States Parties (SPLOS/129), in which attention was drawn to the challenges that the Commission is facing due to the constantly increasing workload related to the examination and consideration of submissions by coastal States concerning the outer limits of the continental shelf in accordance with article 76,

Recalling also the presentation made by the Chairman of the Commission to the fifteenth Meeting of States Parties (SPLOS/135), in which he presented three scenarios for the workload of the Commission from 2005 to 2009 (Scenario A (conservative) — 16 submissions by 2009; Scenario B (most likely) — 28 submissions by 2009; Scenario C (worst case) — 50 submissions by 2009) and stated that under Scenario A members of the Commission would be required for 3.5 months per year in New York during the period 2007-2009, while under Scenario B the level of work would be unsustainable under the present system and that it would be necessary to change the working arrangements of the Commission or for submissions would need to be queued,

Recalling further General Assembly resolution 60/30 of 29 November 2005, in which the Assembly noted the important role of the Commission in assisting States Parties in the implementation of Part VI of the Convention, through the examination of information submitted by coastal States regarding the outer limits of the continental shelf beyond 200 nautical miles, also noted the need to ensure the effective functioning of the Commission during a period of rapidly increasing workload, noted in particular the need to ensure participation of the members of the Commission in its subcommissions, and urged the Secretary-General to continue taking all necessary actions to ensure that the Commission could fulfil the functions entrusted to it under the Convention in the light of its rapidly increasing workload,

Conscious that the global understanding of continental margins has advanced considerably in the last three decades and that major technological and scientific advances are being utilized by coastal States in preparing their submissions under article 76, and that this has made the work of the Commission more complex and demanding and had created some difficulties in the application of the provisions of annex II to the Convention concerning the working arrangements of the Commission and its members, particularly the financial arrangements for participation of the members,

Recalling that at the time of the Third Conference on the Law of the Sea the number of coastal States with an extended continental shelf was estimated to be 33 (A/CONF.62/C.2/L.98/Add.1), but that more recent estimates have put the total at almost double that number,

Having considered the letter dated 19 May 2006 from the Chairman of the Commission addressed to the President of the sixteenth Meeting of States Parties

containing specific proposals from the Commission for its more effective functioning in light of its future workload, which involve measures that should be taken by the Meeting of States Parties and the General Assembly,

1. *Notes* that the Commission, which examines submissions by way of seven-member subcommissions, already has on its agenda the simultaneous examination of three submissions made by Australia, Brazil and Ireland, and is still to receive and examine a revised submission from the Russian Federation;

2. *Notes also* that New Zealand delivered its submission in April 2006 and it is expected that in the next three years a large number of new submissions will be made to the Commission;

3. *Recognizes* that the average amount of work forecast for members of the Commission for the period 2007-2012 will require their attendance at United Nations Headquarters for two sessions of up to two months each per year, and therefore it is crucial that the members of the Commission have guaranteed financial support for their presence for up to four months per year in New York, while the job positions and salaries of members in their home countries need to be retained and guaranteed, without prejudice to their career, or for other members their loss of earnings needs to be covered without affecting their financial well-being;

4. *Recalls* that, according to paragraph 5 of article 2 of annex II to the Convention, the State Party which submitted the nomination of a member of the Commission shall defray the expenses of that member while in performance of Commission duties;

5. *Also recalls* that it is not unprecedented for members of various committees and other bodies established under certain conventions to receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide;

6. *Recommends* that, taking into account the importance of the Commission's responsibilities, adequate additional funding from the regular budget of the United Nations be provided to ensure the full participation of the members of the Commission in its work given the requirement of up to four months of full-time work at the United Nations Headquarters per year;

7. *Calls upon* States Parties to the Convention to propose, through a draft resolution for consideration by the General Assembly, that the members of the Commission receive emoluments and expenses while they are performing Commission duties concerning the consideration of submissions made by coastal States on the outer limits of the continental shelf under article 76, and that such emoluments and expenses be defrayed through the regular budget of the United Nations.